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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,357	12/10/2003	Shimon Tsurgil	20070/1200636-US1	8712
7278	7590	11/10/2004	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,357

Applicant(s)

TSURGIL, SHIMON

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-3,6,9-13** are rejected under 35 U.S.C. 102(b) as being anticipated by Ag. Technologies Horticulture (article from the internet “Tropical & Sub-Tropical Fruits: Banana” as cited on form PTO-892, herein Ag. Tech).

For claim 1, Ag. Tech teaches a method of propagating a species of the genus *Musa*, comprising the step of: (a) planting one or more whole defoliated suckers (page 1, under “Propagation”) of the genus *Musa* substantially horizontally (page 1, under “Planting” by two methods, Pit and Furrow, and page 3, under “Orchard establishment and care”, 2nd paragraph, planting in furrows 1.5 to 1.7 meter); and (b) growing one or more plants from each sucker.

For claim 2, Ag. Tech teaches wherein step (a) comprises: (i) providing a furrow in the ground (page 3, under “Orchard establishment and care”); (ii) inserting each whole defoliated sucker substantially horizontally into the furrow (inherent to plant the suckers); and (iii) covering the corm of each sucker with soil while leaving the pseudostem exposed (inherent to cover the corm of the sucker, see throughout article).

For claim 3, Ag. Tech teaches wherein each whole defoliated sucker is oriented in the furrow so that its longitudinal axis is parallel to that of the furrow (pages 1 & 3 as

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mentioned above). Note, since applicant did not specify the furrow's axis, the examiner is considering the sucker to be planted vertical and the furrow's axis that is parallel to the axis of the sucker is vertical axis.

For claim 6, Ag. Tech teaches wherein-step (b) comprises: (i) cultivating the whole defoliated sucker to yield a plurality of vertical offshoots (inherent and discussed throughout the article); (ii) selecting a plurality of vertical offshoots to cultivate and removing the remaining vertical offshoots (page 1, under "After Cares: Desuckering"); (iii) cultivating the selected vertical offshoots to maturity (see pages 1-3).

For claim 9, Ag. Tech teaches the method further comprising the step of (c) cultivating fruit from the plants (page 2, under "Harvesting and Yield").

For claim 10, Ag. Tech teaches the method further comprising the step of (d) picking the fruit (page 2, under "Harvesting and Yield").

For claim 11, Ag. Tech teaches wherein the fruit is banana.

For claim 12, Ag. Tech teaches in a method of propagating bananas from suckers, the improvement comprising planting whole defoliated suckers substantially horizontally (see whole article and above for explanation).

For claim 13, Ag. Tech teaches bananas prepared by the method of claim 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 4,5,7,8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ag. Tech (as above).

For claims 4 & 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to plant the suckers of Ag. Tech pairwise, depending on the available land space and how big the banana variety is.


For claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select only two vertical offshoots in the step (b)(ii) of Ag. Tech, depending on how many plants one wishes to grow or produce from the offshoots.

For claim 8, Ag. Tech teaches offshoots are removed by pruning or destruction (page 1, under "After Cares").

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn